Allocation Hearing Exhibit 1008

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In re	)	
	)	
DISTRIBUTION OF CABLE ROYALTY FUNDS	)	**NO. 14-CRB-0010-CD (2010-13)**
	)	

Written Direct Testimony of

ALLAN SINGER

December 22, 2016

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I. QUALIFICATIONS

1. I have over twenty years of experience in the cable television industry as an executive involved with both the acquisition and the licensing of television programming. My job responsibilities during that period required that I be familiar with the fair market value of the different types of television programming distributed over cable systems.

2. In 1996, after practicing law for ten years, I joined the programming department at the then-largest cable system operator, Tele-Communications, Inc. ("TCI"). I was responsible for negotiating the rights to distribute programming content over TCI and its affiliated cable television systems serving more than 16 million subscribers throughout the United States. This included analyzing, and determining the amounts TCI would be willing to pay for, several general entertainment networks, sports services, premium services, movie services, pay-per view events (sports, music, and movies), broadcast and local television stations, and religious and shopping programming.

3. In 1999 TCI was acquired by AT&T Corp. and rebranded as AT&T Broadband. I was promoted to SVP, Programming at AT&T Broadband and became the department head. After Comcast acquired AT&T Broadband, in 2003 I was named SVP, Programming Investments for Comcast. I assisted in the management of Comcast's various programming networks (*e.g.*, E!, Golf Channel, OLN/VS, style, Comcast SportsNet Philadelphia); increasing the distribution and profitability of those assets; developing, launching and achieving distribution for new cable networks (*e.g.*, G4, TV1, and Sprout); and acquiring the rights for and development of new regional sports networks (CSN Chicago, CSN Bay Area, CSN Mid-Atlantic, SNY). I also evaluated the acquisition of various cable networks. My responsibilities included determining the market value of these businesses as reflected in the highest per

subscriber/per month ("PSPM") license fee cable systems and other multichannel video programming distributors ("MVPDs") would pay for them.

4. In 2005, I became SVP, Sports Business Development for Comcast. I participated in the transition of Outdoor Life Network from a sportsman/outdoors channel to a national sports service; acquired the national television and new media rights for the then OLN/VS network from the National Hockey League; developed additional regional sports services; and negotiated for the rights to exhibit telecasts of National Football League games under a then-new, proposed Thursday night package.

5. In 2007, I was appointed SVP, Content Acquisition at Comcast. I resumed my prior role in the valuation and acquisition of content for the then-largest MVPD, including negotiations with various program networks for carriage on Comcast cable systems serving more than 20 million subscribers around the country. I also was involved in acquiring the rights to exhibit video content "online" and the rights to exhibit video on a "non-linear" basis (video on-demand or "VOD" and "download to go" rights).

6. In 2009, I became EVP, Distribution and Strategy, for the Oprah Winfrey Network ("OWN"), a joint venture between Discovery Communications, Inc. and Oprah Winfrey. Our business plan for OWN was to take Discovery Health Channel, which was at the time widely distributed for free, and rebrand the service as OWN. I developed the distribution strategy which transitioned all of the 80 million subscribers from the free Discovery Health Channel to a license fee based service in OWN. As such, it was critical to determine the most accurate yet highest PSPM license fee that MVPDs would pay for OWN.

7. In 2011, I moved to Charter Communications as SVP, Programming, where I again became head of an MVPD's programming department and assumed the same program

acquisition and licensing responsibilities described above. In addition, I was responsible for evaluating the impact from technology changes in the distribution of content on content valuations. I reported to Charter's CEO and was part of the senior team that rebuilt Charter into the most profitable cable company in the country. During my tenure, Charter operated over 100 "Form 3" cable systems. I left Charter shortly after its merger with Time Warner Cable in May 2016.

8. My full resume is attached as Appendix A.

II. INTRODUCTION AND SUMMARY

9. I understand that the purpose of this proceeding is to allocate among different categories of program owners the royalties that cable systems paid to carry various out-of-market (distant) broadcast television signals during the years 2010-13 pursuant to the Section 111 statutory license. At the request of the Joint Sports Claimants ("JSC"), I have reviewed the report entitled *Cable Operator Valuation of Distant Signal Non-Network Programming: 2010-2013* prepared by Bortz Media & Sports Group, Inc. (the "Bortz Report"). The Bortz Report reflects the results of cable executive surveys which show how cable operators would have allocated their distant signal programming budgets among these program categories.

10. I believe that the 2010-13 survey results set forth in the Bortz Report accurately reflect the average relative values that cable system operators ("CSOs") ascribed to the different types of non-network programming on distant signals they carried during the years 2010 through 2013. These results are consistent with my experience as a cable programming executive; my familiarity with the marketplace during the time period in question; and my discussions with local programming decision-makers during the same time period. In particular, I agree with the conclusion that the sports programming on distant signals (including the superstation WGN) was

the most valuable programming on those signals – and that cable operators would have paid roughly one-third of their distant signal non-network programming budgets for that sports programming.

11. I also have reviewed the testimony that various cable executives provided in prior cable royalty distribution proceedings concerning earlier Bortz surveys and the valuation of programming on distant signals. As discussed below, I believe the points made in that testimony have equal applicability to the period 2010-13. However, changes in the marketplace have underscored the relative importance of the non-network sports programming on distant signals including WGN.

III. FACTORS CONSIDERED BY CABLE SYSTEMS IN MAKING PROGRAM CARRIAGE DECISIONS

12. There are several factors that affect a CSO's decision on whether to carry, and how much to pay for, particular types of programming. These factors are: (i) customer acquisition and retention, (ii) managing increasing programming expense, and (iii) bandwidth constraints.[1] The importance of these factors has evolved over time.[2]

13. The ability of particular programming to support customer acquisition and retention is a crucial factor in carriage decisions because subscriber fees comprise the vast majority of the revenue CSOs derive from their video service offerings. With the maturation of the multichannel video subscription industry by 2010, customer retention had become a more important factor than acquisition. It is easier to keep an existing customer than to tap into the

[1] Bandwidth is a cable operator's shelf space and will always have to be managed. However, due to technological and infrastructure improvements, by 2010-13, bandwidth was less of a concern in programming decisions than it had been in earlier years.

[2] An additional factor is the CSO's ability to offset programming expense through the sale of advertising. Cable networks typically provide distributors two to three minutes of advertising time per hour, which the distributor may use to advertise its own products and services, or sell to a third party to partially offset the costs of carrying the network. That factor is inapplicable here as CSOs may not insert advertising into distant signals.

small, stubborn universe of non-multichannel customers or to acquire a competitor's customer. It is difficult to find new programming that is truly a significant differentiator. MVPDs generally carry the same programming and seek to maintain access to that programming so as not to risk losing customers because of the absence of "must have" programming. In addition, much of the programming on unique, "independent" cable networks is undifferentiated, syndicated programming available on many platforms, that may be viewed at the customer's schedule off a variety of distribution platforms including outside of a subscription with an MVPD.

14. Thus, from 2010 through today a CSO is generally more concerned about retention of current customers, and values programming accordingly, *i.e.*, absent this programming the company may lose a subscriber to a competitor. A critical factor in determining whether to carry or continue to carry a programming service is the existence of unique, differentiated content.

15. When considering the carriage of a distant signal, the presence of live team sports programming is primarily what differentiates the signal. Each game is a unique, real-time event. Live team sports are popular with a passionate segment of good customers, the very type of customers the CSO is trying to retain. Customers who are fans of professional or college sports expect that these games will be available as part of the subscription, multichannel programming experience they are purchasing. A CSO risks losing customers to competitors if it does not carry services that are exhibiting live sports content, a risk that is not generally present with other non-network programming. Sports programming is the most expensive programming on a cable system precisely because in many instances without it a CSO will lose customers.

16. Another important factor is that, rather than being widely available on other outlets or through new distribution offerings, the distribution of live sports event programming is

generally limited. This limited availability increases the incentive to carry, and hence the value of, distant signals with sports programming.

17. In contrast, over time general entertainment programming has become more and more homogeneous, undifferentiated and accessible to viewing whenever and wherever one wants it and on an abundance of platforms. In (and after) 2010-13, syndicated television series from a distant signal were available on a first-run basis from the original exhibition source, while syndicated library product was generally available on many varied platforms, including for purchase or rental. Syndicated "library" movies are the same. Even when a category of content may be unique, very little of such programming is sufficiently "must have" such that its absence would cause a CSO concern that its absence, and its availability from a competitor, would cause the CSO to lose a customer to that competitor.

18. During 2010-13, by far the most widely retransmitted distant signal was the superstation WGN. Charter, where I served as SVP of Programming beginning in 2011, operated numerous cable systems that carried WGN as a distant signal. WGN was a long-standing and integral part of the channel lineup as it developed in the 1980s. WGN was the long-time home of the Chicago Cubs, an iconic American sports team with a national following. It also carried the telecasts of Major League Baseball games involving the Chicago White Sox and the National Basketball Association games involving the Chicago Bulls. During my tenure at Charter, I viewed the sports programming on WGN as the principal reason to carry it as a distant signal. Customers expected to have access to the sports on WGN. In contrast, the

syndicated reruns and movies on WGN, which were fungible with similar content on other channels and cable networks, had less value.[3]

19. Managing programming expense also is a crucial consideration for any CSO. Much of these costs can be explained by the critical necessity to carry sports services so as not to lose subscribers, and the high cost associated with sports programming relative to other types of programming.

20. In light of these concerns, the decision of whether to carry an independent programming service, and particularly distant broadcast signals, was therefore driven by whether or not the cost of the programming was justified by the risk that absent this signal the company may lose customers to a competitor.

21. Given this test, the local programming decision to maintain the expense and copyright fee associated with carriage of a distant signal was primarily driven by sports programming. It justified the continued expense to the CSO's increasing programming budget because it was crucial to retaining cable subscribers.[4] From my experience, and given what was occurring in the industry at that time, sports programming was the primary justification for maintaining the expense.

IV. BORTZ REPORT RESULTS

22. The Bortz Report found that CSOs would have allocated their expenditures on categories of distant signal programming as set forth below.

[3] While it did not impact the amount of the royalty paid by a CSO to carry WGN, as noted in the Bortz Report, some of the programming on the WGN superstation feed is not compensable in these proceedings because it was not carried simultaneously on the local WGN Chicago broadcast station. This was the case with the vast majority of the syndicated programming, movies, and devotional programming on WGN. In contrast, all of the live team sport events on WGN were carried simultaneously on both the local and superstation feeds.

[4] As stated in note 2 above, CSOs may not insert advertising into distant signals, and so there was not even a nominal cost offset from cable spot advertising revenue.

Table I-1.
Distant Signal Programming Valuation Studies, 2010-13

	2010	2011	2012	2013	2010-13 Average
Live professional and college team sports	40.9%	36.4%	37.9%	37.7%	38.2%
News and public affairs programs	18.7%	18.3%	22.8%	22.7%	20.6%
Movies	15.9%	18.6%	15.3%	15.5%	16.3%
Syndicated shows, series and specials	16.0%	17.4%	13.5%	11.8%	14.7%
PBS and all other programming on non-commercial signals	4.4%	4.7%	5.1%	6.2%	5.1%
Devotional and religious programming	4.0%	4.5%	4.8%	5.0%	4.6%
All programming on Canadian signals	0.1%	0.2%	0.6%	1.2%	0.5%
Total*	100.0%	100.0%	100.0%	100.0%	100.0%

*Columns may not add to total due to rounding.
Source: Bortz Report, Table I-1.

23. These results are consistent with my experience and represent a reasonable estimate of how CSOs, on average, would have allocated their royalty payments for distant signal non-network programming among the respective categories of such programming.

24. The CSO responses to the Bortz Report reflect the greater relative value of sports programming to CSO decision makers. In 2010-13, the live professional and college sports programming on distant signals was the "must have" programming on those signals. Sports is consistent "tune-in", destination programming – its story is most compelling while it is occurring live. Because it is differentiated, unique and exclusive, it presents a substantial risk of subscriber loss if not carried. Thus, sports correctly receives the largest percentage of a distant signal allocation for the royalty payments. In contrast, during this period, syndicated non-network programming became more widely available over various platforms, including outside an MVPD subscription, and the necessity for its exhibition on a specific network was less compelling and necessary.

25. The Bortz Report results indicate that Sports has a high value per each hour carried or viewed: respondents allocated approximately 40% of their budgets to programming that makes up a much smaller percentage of the total hours of programming carried and viewed

on distant signals. That result is not surprising and is consistent with my knowledge and background in the industry. Based on my experience, including purchasing national and regional sports rights, live professional and college team sports programming is – and was in 2010-13 – significantly the most expensive programming a broadcaster or cable network acquires. Programmers pay these ever-increasing amounts for sports rights only because they are able to monetize the rights fees through carriage agreements with MVPDs. Indeed, the power and value of sports content to MVPDs are further demonstrated in the marketplace by the fact that the only new cable networks since the prior proceeding and during this time period able to launch to widespread, expanded basic-type distribution at significant license fees on all MVPDs were sports services; specifically, the NFL Network, Big 10 Network and SEC Channel.

26. The fact that CSOs place a high relative value on sport programming also is reflected in the market price paid through arms-length negotiations with sports networks by MVPDs as compared to general entertainment and other genres of cable networks. On a PSPM basis, the most expensive services for any MVPD are ESPN, ESPN2 and regional sports networks. These services are approximately 4 to 5 times more expensive than the next most expensive non-sports services, and 10 times more expensive than some of the most popular, name brand, general entertainment services. By far the most expensive cable network that is primarily a general entertainment service is TNT, and that is because it exhibits NBA and NCAA Men's basketball games. TNT is roughly 3 times more expensive to MVPDs each month than other popular, brand name, general entertainment networks. Thus, when CSOs negotiate in the marketplace for the carriage of cable networks on their systems they consistently, invariably pay significantly more for sports services than any other genre.

27. In short, my experience with marketplace transactions is consistent with and confirms the high relative value of Sports found in the Bortz Report.

V. PRIOR CABLE EXECUTIVE TESTIMONY

28. I have reviewed the testimony submitted in prior proceedings by the following industry executives: (1) Judith Allen, former SVP of Video at MediaOne, then the third largest multisystem operator ("MSO") (JSC Ex. No. 1); (2) Michael Egan, former Director of Programming at Cablevision Industries, a multistate MSO (JSC Ex. No. 9); (3) Jerry Maglio, former SVP of Marketing and Programming at United Artists Cable, then one of the largest MSOs (JSC Ex. No. 10); (4) Judith Meyka, former SVP Programming at Adelphia Communications, the fifth largest MSO (JSC Ex. No. 11); (5) James Mooney, former President and CEO of the National Cable Television Association ("NCTA"), the cable industry's principal trade association (JSC Ex. No. 12); (6) Trygve Myhren, former head of the cable television subsidiary of Time Inc. (later Time Warner Cable) (JSC Ex. No. 13); (7) June Travis, former Executive Vice President and Chief Operating Officer of the NCTA (JSC Ex. No. 17); (8) Roger L. Werner, then President and CEO Prime Sports Ventures, Inc., which operated multiple regional sports networks, and former CEO of ESPN (JSC Ex. No. 19); and (9) Robert J. Wussler, the former CEO of the nation's then largest superstation, WTBS from Atlanta (JSC Ex. No. 20).

29. Although the MVPD industry has evolved significantly over time, the central points made in the testimony of these cable industry executives about the value of sports programming, both generally and in the context of distant signals, remain true today. I agree that:

- CSOs seek unique programming to attract and retain subscribers. (Wussler, pp. 2-3; Myhren, p. 6; Allen, p. 5; Meyka, p. 4.)

- Sports programming is particularly valuable to CSOs because it is unique, live and non-fungible and has passionate fans. (Werner, p. 3; Wussler, pp. 2-3; Maglio, p. 9; Myhren, p. 4; Mooney, p. 11; Allen, p. 5; Travis, p. 3; Egan, p. 4; Meyka, p. 9)

- Sports programming is a key driver for distant signal carriage because the programming often cannot be had anywhere else. (Myhren, pp. 4-5; Mooney, p. 10; Travis, p. 3; Meyka, p. 11.)

- Sports are the primary reason for CSOs to carry WGN (and other superstations). (Wussler, p. 4 (regarding WTBS); Maglio, p. 8 (discussing WGN, WTBS and WWOR); Mooney, p. 10 (regarding WTBS); Allen, p. 5 (WGN); Egan, pp. 5-6 (WGN); Meyka, p. 10 (WGN).)

- Cable subscribers are unlikely to complain about the loss of movie or rerun syndicated programming on distant signals because there are other sources for that programming. (Maglio, p. 10; Myhren, p. 4-5; Travis, p. 4; Egan, p. 3.)

- Viewing is not an accurate measure of a cable network/distant signal's value to a CSO. (Werner, pp. 3-4; Wussler, p. 3; Myhren, p. 6.)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2016.

Allan Singer

Allan Singer

APPENDIX A

ALLAN SINGER

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Denver, CO 80209

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PROFESSIONAL EXPERIENCE

CHARTER COMMUNICATIONS, INC.

Senior Vice President, Programming
March 2011 to September 2016

As Senior Vice President, Programming, at Charter Communications I headed the company's programming department and reported to Charter's CEO. I was responsible for managing all aspects of Charter's acquisition of video content; including negotiating carriage agreements with large media companies and independent networks, evaluating carriage of cable channels, acquiring video on demand and library offerings from various content companies, developing the budget and long-range plan for the company's largest expense, examining business models for new packages and different distribution modalities, and in managing the department. I was also involved in the various M&A activities in which the company was involved during this time period, and was part of the senior management team that transformed Charter into an extremely successful company.

OPRAH WINFREY NETWORK, LLC

Executive Vice President, Distribution and Strategy
November 2009 to March 2011

At the Oprah Winfrey Network (OWN), I lead the transition from Discovery Health to OWN, was involved in the strategy surrounding OWN's launch and supervised US distribution, digital distribution and overseas distribution agreements. I created OWN's license fee structure and worked closely with OWN's Board to implement our distribution strategy, prepared affiliate marketing materials, presented the Network to distributors and negotiated all agreements. I was responsible for the most successful new network launch in the last fifteen years, increasing distribution and establishing a healthy affiliate revenue stream.

COMCAST

Senior Vice President, Content Acquisition
June 2007 to October 2009

As Senior Vice President, Content Acquisition, at Comcast I was responsible for acquiring network distribution rights with content providers on behalf of the largest multichannel distributor. My responsibilities included negotiating content agreements with media companies for distribution of their cable networks, VOD and broadband content and other new media initiatives. I was also involved in examining and effectuating programming strategies for Comcast.

Senior Vice President, Business Development, Sports
June 2006 – June 2007

In this position, I was responsible for securing sports rights across various distribution and technology platforms, with particular emphasis on acquiring these rights for Comcast's regional and national sports networks. I also helped develop Comcast's regional and national sports strategy. I was the lead negotiator in the acquisition of National Hockey League rights for the exhibition of games on linear

television, streaming, VOD and broadband rights for Comcast and VS, and was on the Comcast team that negotiated with the NFL.

Senior Vice President, Programming Investments
March 2003 – June 2006

Comcast's former programming investments department was responsible for managing and expanding Comcast's network portfolio. Our department evaluated numerous acquisition opportunities of media companies, networks and strategic rights acquisitions. It acquired TechTV and combined it with our G4 Network, growing that network from 17 to 52 million subscribers. We developed and launched TV One and PBS Kids Sprout. I was also responsible for the supervision of the various Comcast networks' affiliate sales and marketing departments, and entered into affiliation agreements on their behalf with various cable and DBS providers. I also led the rights negotiations that resulted in the creation of Comcast SportsNet Chicago, obtained the rights to Sacramento Kings' games resulting in the development of Comcast SportsNet West and negotiated the rights and affiliation agreements that created SportsNet New York.

AT&T BROADBAND, LLC
(formerly Tele-Communications, Inc.)

Senior Vice President, Programming
President, Satellite Services, Inc., 2001 - 2003
1996 - 2003 (SVP, 2001 – 2003, Vice President 1997 - 2001, Director 1996)

As Senior Vice President of Programming at AT&T Broadband and President of Satellite Services, Inc., its content acquisition subsidiary, I lead rights acquisition negotiations with content providers for the nation's then largest cable television company. In this capacity, my department completed programming agreements with a variety of media companies for the distribution of cable and broadcast networks, movie studios and pay-per-view events and sports content. I negotiated complicated rights transactions, drafted and reviewed sophisticated contracts, evaluated equity positions, developed and initiated long-term strategy goals and analyzed the financial ramifications of long-term programming obligations. I also worked with the company's marketing department to assist in cooperative promotional relationships with other media companies and facilitated the implementation of programming decisions by our local business operations.

WHITE AND STEELE, P.C.

Partner 1994 - 1996
Associate 1987 - 1993

I was a partner with White and Steele, at the time the twelfth largest law firm in the Rocky Mountain region. At White and Steele, I tried cases in district courts throughout Colorado where I primarily defended professional negligence cases for attorneys, accountants and health care providers. I briefed and argued cases before the Colorado Supreme Court and other appellate courts, and assisted licensed professionals in matters before their disciplinary boards and regulatory agencies.

FIERST AND CHRISTOPHER, P.C.
1986 - 1987

HOLMES AND STARR, P.C.
1985 - 1986

General associate attorney duties at these firms.

CHIEF JUDGE DAVID ENOCH, COLORADO COURT OF APPEALS
Judicial Clerk 1984 - 1985

EDUCATION

JURIS DOCTOR, UNIVERSITY OF COLORADO, Boulder, Colorado **1984**

BACHELOR OF ARTS, DICKINSON COLLEGE, Carlisle, Pennsylvania **1981**

-Magna Cum Laude
-Phi Beta Kappa
-Varsity letterman in lacrosse in each of my three years at Dickinson
-Attended Hatfield College, Durham University, England, junior year

BOARD MEMBERSHIPS and ORGANIZATIONS

-Board Member, iN Demand, 2001 - 2002
-University of Colorado School of Law Dean's Advisory Committee, 2014-2106
-Board Member, Make A Wish of SE Pennsylvania 2006 to 2009
-Board Member, Colorado Special Olympics of Colorado 2000 - 2003
-Board of Directors, Forest Hills Metropolitan District, 1994 - 1996
-Colorado Bar Association Ethics Committee, 1990 - 1993

ACTIVITIES

I enjoy tennis, skiing, guitar, reading and spending time with my two sons.

Certificate of Service

I hereby certify that on Monday, February 12, 2018 I provided a true and correct copy of the Allan Singer Written Direct Testimony to the following:

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

National Association of Broadcasters (NAB), represented by John Stewart served via Electronic Service at jstewart@crowell.com

Spanish Language Producers, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

SESAC, Inc., represented by John C. Beiter served via Electronic Service at jbeiter@lsglegal.com

MPAA-represented Program Suppliers, represented by Lucy H Plovnick served via Electronic Service at lhp@msk.com

Public Broadcasting Service (PBS), represented by Dustin Cho served via Electronic Service at dcho@cov.com

National Public Radio, Inc. (NPR), represented by Gregory A Lewis served via Electronic Service at glewis@npr.org

Broadcast Music, Inc. (BMI), represented by Joseph DiMona served via Electronic Service at jdimona@bmi.com

Canadian Claimants Group, represented by Lawrence K Satterfield served via Electronic Service at lksatterfield@satterfield-pllc.com

Multigroup Claimants, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Devotional Claimants, represented by Michael A Warley served via Electronic Service at michael.warley@pillsburylaw.com

Signed: /s/ Michael E Kientzle